IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11652 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEVCHANDBHAI DAYALBHAI PATEL - Petitioner(s)
Versus
REGIONAL TRANSPORT OFFICER & 1 - Respondent(s)

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Appearance :
MR DK NAKRANI for Petitioner(s) : 1,
MS.MAITHILI MEHTA, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 16/06/2006

ORAL JUDGMENT

The petitioner before this Court is seeking a writ of mandamus for quashing and setting aside the order dated 30th October 2005, a copy of which is produced at Annexure 'A' to this petition, passed by respondent no.2.

It is the case of the petitioner that his vehicle bearing Registration No.RJ 27 P 4158 was inspected at the Check Post, Alang on 30th October 2005 and having found certain breaches which are mentioned in the Report, the same was detained. The breaches as mentioned in the report are: (i) the document showing 'payment of tax', 'insurance' and 'permit of the vehicle were not produced, (ii) the vehicle was found carrying 40 passengers, who boarded the vehicle from Rajula of Surat, the driver was intimated that he has committed breach of permit, (iii) the driving licence was not produced. The vehicle was detained at the risk of the owner of the vehicle/ driver under the provisions of section 12(B) of the Motor Vehicles Act, 1958 (hereinafter referred to as “the Act”), at Alang Check Post. The issuing authority also informed that the owner of the vehicle/ driver shall show cause as to why legal action should not be taken.

2. The petitioner responded to the said challan on 7th November 2005. It is stated in the reply that the vehicle is detained on 30th October 2005; that at present it is the season of Diwali, therefore, his vehicle be immediately released; that when the vehicle was detained on 30th October 2005 all the original documents were deposited with the authority; that under the provisions of subsec.(2) of sec.207 of the Act, the authorities have discretion to release the vehicle, but in spite of that discretion the authorities have not released the vehicle.

3. The learned advocate for the petitioner then pleaded that the vehicle had entered the limits of the State of Gujarat. As per Circular dated 4th September 2001, a vehicle entering the limits of the State of Gujarat is liable to pay tax for full one month (a copy of the circular is produced at Annexure 'H'). It is submitted that if as per the said circular, the petitioner is liable to pay the tax for full month, he is ready and willing to pay tax for the entire month. The learned advocate submitted that taking this aspect into consideration the Court may entertain the petition and direct the authorities to release the vehicle on payment of the tax for entire month of October 2005.

4. The aforesaid two submissions have nothing common. The vehicle was detained on 30th October 2005 for having found certain breaches committed by the driver/ owner of the vehicle as mentioned in the Report/ Detention Memo. The learned advocate appearing for the petitioner though inquired could not point out as wherefrom the question of payment of tax for entire month is raised. He is not able to point out any demand made by the authorities for the tax. He is also not able to show that the vehicle is detained for non payment of tax.

5. The learned advocate without appreciating as to how the judgement of this Court in Special Criminal Application No.807 of 1999 dated 16th March 2001 is applicable to the facts of the present case, placed

heavy reliance on the same and vehemently submitted that as it is mentioned by this Court in para 17(ii) and (iii) of the judgement a writ petition is maintainable. Para 17 is reproduced hereunder:

> "17. Looking to the inconvenience and difficulty, both of the owner and in charge of the vehicle as well as the passengers and to check the avoidable litigations which are coming up before this Court, I consider it to be appropriate to give directions in this respect to the State of Gujarat how matters of this nature are to be dealt with by the Police officers or the officer authorised in this behalf by it under the Act, 1988. These are as under:
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> (i)In a case where for the offence committed under the Motor Vehicles Act, 1988, the Police officer or other person authorised in this behalf by the State Government, seizes and detains the motor vehicle, the officer concerned has to inform to the owner or in charge of the vehicle on the spot re. Provision as contained in subsection (2) of section 207 of the Act, 1988, and where he applies for the release of the vehicle, then and there the order be made. However, while passing that order the officer may not impose this condition of clearing all the

pending departmental cases i.e. N.C. Memos. However, whatever legally permissible other conditions available may be imposed.

(ii) If that conditional order is accepted by the owner or in charge of the vehicle then there is no problem. However, in the case where the owner or in charge of the vehicle does not apply for release of the vehicle or has not accepted the conditional order passed for release of the vehicle by the officer authorised, the challan in that case to be submitted in the Court on the very day, if time is available, or in all the eventualities, within a day or two. It is open to the officer authorised either to keep the vehicle in his custody or produce the same in the Court.

(iii)In the case where the vehicle is seized and detained and challan has not been filed within the time aforesaid by the officer authorised in this behalf it is open to the owner or in charge of the vehicle to ask the said officer in writing to produce the challan and in case within a day or two of this demand, challan is not filed in the court then only he may resort to the remedy under Article 226 of the Constitution of India, and not otherwise."

The learned advocate placed reliance on the observations made by this Court in para 17(iii).

There, it is stated that if the vehicle is seized and detained and challan is not filed within the time aforesaid by the officer authorised in this behalf it is open to the owner or in charge of the vehicle to ask the said officer in writing to produce the challan and in case within a day or two of this demand, challan is not filed in the court then he may resort to the remedy under Article 226 of the Constitution of India, and not otherwise.

The learned advocate is reading these observations to mean that the Court has conferred upon every owner/ driver of the detained vehicle a right to file a petition before this Court in every case wherein vehicle is detained.

6. This Court is of the considered opinion that the learned advocate has neither appreciated the true scope of the dispute involved in the petition nor has appreciated the true scope of the judgement relied upon. The learned advocate is not able to point out as to after having filed its reply dated 7th November 2005, to the order of detention dated 30th October 2005, what steps the petitioner has taken in the matter. Prima facie, it appears that the petitioner is guilty of non action on his part, which amounts to delay and latches and therefore, this petition cannot be entertained in the discretionary jurisdiction under Article 226 of the Constitution of India. In this view of the matter no case is made out. The petition is dismissed. No order as to costs.

(RAVI R. TRIPATHI, J.)

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